(AR-18J)

Timothy J. Method
Assistant Commissioner
Office of Air Management
Indiana Department of Environmental Management
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Dear Mr. Method:

This letter is in response to your question on the use of sulfur dioxide (SO_2) allowances allocated under the acid rain program. You asked if such allowances that are sold under the SO_2 allowance program of Title IV (§403) of the Clean Air Act (Act) could also be used concurrently as emissions offset credits under Title I (§173(c)) by a new major source in a nonattainment area. The answer to your question is that such SO_2 emission reductions cannot be used for nonattainment offsets.

For nonattainment new source review (NSR) emissions offset credits, §173(c)(2) states "emission reductions otherwise required by the Act shall not be creditable as emissions reductions for purposes of any such offset requirement." This requirement is further stated in the proposed NSR rule changes on page 13553 of the April 16, 1992, Federal Register (volume 57, number 74), which states "reductions required to meet reasonably available control technology and acid rain reductions pursuant to statutory requirements are not creditable for emissions offsets" (emphasis added).

The following example explains our position that emissions reductions made under §403 are considered as "required by the Act." Under §403, all sources must hold allowances equal to or greater than its emissions of SO_2. For example, a source has allowances to emit 5000 tons per year (tpy) of SO_2, but reduces its emissions so that it actually emits only 3000 tons of SO_2 in a given year. At the end of the calendar year, the source verifies its emissions and deducts an equal number of allowances from its account. It may then sell 2000 allowances. The source now has only 3000 tpy of allowances and is required under the Act to limit its emissions to that level. Another source, by acquiring the 2000 allowances has acquired authorization to emit an extra 2000 tons of SO_2. Since the source initially does not have to limit itself to 3000 tpy, it may appear that the excess 2000 tpy allowance is not required by the Act. However, once the source sells the excess 2000 tpy

allowance, it forfeits its right to emit up to 5000 tpy. In the next calendar year, the source is reallocated 5000 allowances.

However, no such statutory restriction as stated in §173(c)(2) exists with respect to netting credits that would be used to exempt a source from major source review. It appears that allowances which are sold under the SO_2 allowance program may be eligible for Title I netting credits. This is supported by USEPA's position with respect to nitrogen oxide (NO_x) set forth in the proposed rule for NO_x on page 55626 of the November 25, 1992, Federal Register (volume 57, number 228). This proposed rule states that nitrogen oxide (NO_x) "emission reductions resulting from the Title IV program may be considered for purposes of meeting certain Title I requirements, under appropriate conditions. To receive Title I state implementation plan credit . . . for purposes of banking, bubbling, or netting, emission reductions from the Title IV program must be surplus to the Title I requirements, enforceable, quantifiable, and permanent" (emphasis added). Only those Title IV emission reductions that exceed any applicable Title I requirements (for example, NSR emission offsets) would be surplus and these emission reductions would then need to be made enforceable, quantifiable, and permanent. Although this Federal Register cites NO_x emission reductions in its example, the same concept would apply to Title IV SO_2 emission reductions.

If you have any questions, please contact Sam Portanova, of my staff, at (312) 886-3189.

Sincerely yours,

Stephen Rothblatt, Chief
Regulation Development Branch

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